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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Gordon J. Freeman, Vassiliki
A. Boussiotis, and Lee M. Nadler

Serial No.: 08/446,200

Filed: 19 May 1995

For: *Methods for Selectively Modulating A TH2-Type
Response Within a Population of Activated CD4⁺ T
Cells*

Attorney Docket No.: RPI-033

Group Art Unit: 1644 **RECEIVED**

Examiner: Rabin, E **MAR 15 2002**

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CERTIFICATION UNDER 37 CFR 1.10

Date of Deposit: March 11, 2002

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I hereby certify that this 37 CFR 1.53(b) request and the documents referred to as attached therein are being deposited with the United States Postal Service on the date indicated above in an envelope as "Express Mail Post Office to Addressee" service under 37 CFR 1.10 and addressed to the Assistant Commissioner for Patents, Box AF, Washington, D.C. 20231.

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PETITION FOR REHEARING UNDER 37 CFR §1.197(b)

Appellants hereby file a petition for rehearing under 37 CFR §1.197(b) from the decision of the Board of Patent Appeals and Interferences in the above-identified application affirming the rejection of claims 1-4 under 35 U.S.C. §103. Appellants respectfully request that the Board of Patent Appeals and Interferences rehear this case and reverse the Examiner's rejection of the claimed subject matter for the following reasons:

I. IMPROPER GROUPING OF THE CLAIMS

The Board states in its decision that “[w]e find no arguments in the Brief which separately address the patentability of the dependent claims or any other indication why appellants regarded them as separately patentable over the prior art relied on by the Examiner. 37 CFR §1.192(c)(7) (1997) (Claims stand or fall together “unless a statement is included that claims the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable.”).”

Appellants respectfully disagree with the Boards conclusion. Briefly, claim 1 is an independent genus claim drawn to a method for selectively modulating a Th2-type response within a population of activated CD4+ T cells. The method includes contacting the population of activated CD4+ T cells with an agent which modulates a B7-2-induced signal in the population of activated CD4+ T cells, such that the Th2-type response is modulated.

Claims 2-4 depend from claim 1. Claim 2 is directed to a method of claim 1, in which the Th2-type response is induced by contacting the population of activated CD4+ T cells with an agent which stimulates a B7-2-induced signal. Claim 3 is directed to a method of claim 2, in which the agent which stimulates a B7-2-induced signal in the population of activated CD4+ T cells is a stimulatory form of B7-2. Claim 4 is directed to a method of claim 3, in which the stimulatory form of B7-2 is a form of B7-2 which is attached to a solid phase support

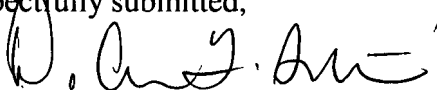
Appellants submit that a statement was included in the Appeal Brief filed May 3, 1999 stating that “[t]he rejected claims do not stand or fall together for the reasons set forth below” (see page 4 of Appeal Brief). Furthermore, Appellants arguments in the Arguments section of the Appeal Brief, set forth specific *substantive* arguments as required under 37 CFR §1.192(c)(8), as to why the elements of the dependent claims were not taught or suggested by the references relied upon by the Examiner. Appellants incorporate herein the arguments set forth in the Appeal Brief and in particular and for example, point the Board to page 8, third paragraph through page 9, first paragraph of Appeal Brief which states in part that the present invention is

based on the discovery that Th2 responses can be induced by *stimulation* of T cells with B7-2, as required by claim 2. Therefore contrary to the Board's assertion, Appellants did in fact "separately address the patentability of the dependent claims" as required by the rules.

II. CONCLUSION

Appellants submit that the Board improperly grouped claims 1-4, failing to properly review dependent claims 2-4, and respectfully request that a rehearing be granted. Appellants submit that pending claims are patentable and it is respectfully requested that the Board reverse its decision affirming the Examiner's rejection of the subject matter of these claims for the reasons given above.

Respectfully submitted,



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APPENDIX A

1. A method for selectively modulating a Th2-type response within a population of activated CD4+ T cells, comprising contacting the population of activated CD4+ T cells with an agent which modulates a B7-2-induced signal in the population of activated CD4+ T cells, such that the Th2-type response is modulated.
2. The method of claim 1, wherein the Th2-type response is induced by contacting the population of activated CD4+ T cells with an agent which stimulates a B7-2-induced signal.
3. The method of claim 2, wherein the agent which stimulates a B7-2-induced signal in the population of activated CD4+ T cells is a stimulatory form of B7-2.
4. The method of claim 3, wherein the stimulatory form of B7-2 is a form of B7-2 which is attached to a solid phase support.